

THE STATE
versus
MACDONALD KADENHE

HIGH COURT OF ZIMBABWE
MUTEVEDZI J
HARARE, 7 September & 5 February 2024

Assessors: Mr *Barwa*
Mrs *Gwatiringa*

Criminal Trial

A. Mupini, for the state

N. Usavi, for the accused

MUTEVEDZI J: The accused is related to the deceased in that he is a son of the deceased's sister in law. The two started the fateful night drinking beer with their colleagues. We are told that the last of those friends left the accused's homestead around 2030 hours. The drinking spree continued into the early hours of the following morning. An argument ensued between the two relatives. It revolved around accusations by the deceased that the accused was not taking care of his ailing wife. The accused did not take kindly to the chastisement. The misunderstanding quickly degenerated into a fist fight from which the deceased Tichaona Charamuka came out worse. He sustained mortal wounds from which he subsequently died. It led to the arrest of Macdonald Kadenhe on these allegations of murder.

The prosecutor said it occurred on 14 November 2022 at Plot 9, Range Farm in Centenary. The accused was alleged to have struck the deceased on the head with clenched fists. At his trial, the accused pleaded not guilty to the murder. He said he had no intention to kill the deceased. He however pleaded guilty to the lesser charge of culpable homicide. The state indicated that it was prepared to accept the accused's limited plea. The parties drew up a statement of the agreed facts in which it was stated that when the argument degenerated, the deceased attacked the accused person who then retaliated. In the scuffle the accused overpowered the deceased who fell to the ground. He hit the back of his head against an in-built concrete bench in the hut. He started bleeding but the fight didn't stop. The accused seized the advantage to continue attacking the deceased. He sat on his chest and relentlessly hit him

with clenched fists until the deceased was bleeding from both the nose and the mouth. Witnesses called Zaire Chaminuka and Kenneth Phiri arrived after the accused had gotten off the deceased's chest. They examined the deceased and noted that he appeared lifeless. Later, a report was made to the police. Detectives attended the scene and conveyed the body to hospital where the deceased was certified dead. The pathologist concluded that he had died from severe head trauma. The prosecutor sought to produce the pathologist's post mortem report as an exhibit in court. The defence did not object. It was duly admitted as an exhibit.

The accused's contention was that he at no time had intended to kill the deceased. From the circumstances of the case, it was clear that the prosecutor's concession that the accused lacked the intention to kill was a sound one. The deceased died from a drunken brawl between two relatives who prior to that he had no issues against each other. The accused admitted that he had acted negligently in that he failed to pay regard to the amount of force he exerted at the time he was assaulting the hapless deceased who was lying on the ground and that the part of the deceased's body which he targeted was a sensitive and vulnerable one.

It was against the above background of the concessions by prosecution, the agreed facts and an examination of the post mortem report that the court was left with no apprehension that indeed the accused could not be guilty of murder but of culpable homicide. As a result it is ordered as follows:

The accused person is found not guilty and is acquitted of the charge of murder.

He is however found guilty of the lesser charge of culpable homicide as defined in s 49 of the Criminal Law Code.

National Prosecuting Authority, state's legal practitioners
Nyakutombwa Legal Practice, accused's legal practitioners